(i) Arbitration and Conciliation Act, 1996 (26 of 1996), Section 7 — Arbitration agreement — Use of word "can" — No binding arbitration agreement — **Clause providing that disputes "can be settled by arbitration" indicates merely the future possibility of referring disputes to arbitration and is not a binding arbitration agreement — For disputes to be settled by arbitration, a further agreement between the parties would be required, which can only come into existence when both parties agree — Such a clause is, at best, an agreement to enter into an arbitration agreement in future**

Relied on *Jagdish Chander v. Ramesh Chander*, 2007(5) SCC 719 and *BGM and M-RPL-JMCT(JV) v. Eastern Coalfields Ltd.*, 2025 SCC OnLine SC 1471. **[Paras 12, 13]**

The clause subject matter of dispute in this appeal indicates merely the future possibility of referring disputes to arbitration and as such, it cannot be said to be a binding arbitration agreement. In other words, the possibility of arbitration being used to settle disputes is open however, for the disputes to be settled by arbitration, further agreement between the parties would be required and needless to add, such an agreement can only come into existence when both parties agree to the same. In that view of the matter, we are of the considered view that this appeal is bereft of merit. It is accordingly dismissed. [Para 13]

(ii) Arbitration and Conciliation Act, 1996 (26 of 1996) — Arbitration — Consent as *sine qua non* — Party autonomy — Arbitration can only be the chosen method of dispute resolution if both/all parties to the dispute agree that it will be so — Parties must mutually intend to refer their differences to arbitration, as consent is the source of the Arbitral Tribunal's jurisdiction — Party autonomy encompasses not only the medium but also the choice of forum, applicable law and, to some extent, procedural norms — It is not for a Court to compulsorily send parties before the jurisdiction that they have not chosen — Relied on *Cox & Kings Ltd. v. SAP India (P) Ltd.*, (2024) 4 SCC 1. **[Paras 6, 9.6]**

(iii) Contract — Interpretation — Primacy of words used — *Ex praecedentibus et consequentibus optima fit interpretatio* — The words chosen by the parties are the most reliable manifestation of the intent — The meaning of the words used in contract is not found in strict etymological propriety or popular usage of word(s) as in the subject, occasion or context in which they are used, within the contractual realm — The written word is the foundation of legal obligation; to disregard or to impute an obligation or meaning which was not intended would compromise party autonomy — Relied on *Union of India v. Raman Iron Foundry*, (1974) 2 SCC 231 and *Provash Chandra Dalui v. Biswanath Banerjee*, 1989 Supp (1) SCC 487. **[Para 11]**

(iv) Arbitration and Conciliation Act, 1996 (26 of 1996), Section 11 — Scope of enquiry at the stage of appointment of arbitrator — Scope of enquiry under Section 11(6A) is limited to a *prima facie* scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to rule under Section 16 — *Prima facie* view on

existence of arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award — Limited jurisdiction of the Referral Court must not be misused by parties to force other parties to participate in a time-consuming and costly arbitration process — Relied on *SBI General Insurance Co. Ltd. v. Krish Spg.*, (2024) 12 SCC 1 and *Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd.*, (2025) 2 SCC 192. **[Paras 7.1, 7.2]**

(v) Arbitration agreement — Essential attributes — An agreement to qualify as an arbitration agreement must contemplate: (a) that the decision of the tribunal will be binding on the parties; (b) that the jurisdiction of the tribunal is derived either from the consent of the parties or from an order of the Court or from a statute; (c) that the substantive rights of the parties will be determined by the agreed tribunal; (d) that the tribunal will determine the rights of the parties in an impartial and judicial manner with an equal obligation of fairness towards both sides; (e) that the agreement to refer disputes to the decision of the tribunal is intended to be enforceable in law; and (f) that the tribunal will make a decision upon a dispute which is already formulated at the time of reference — Relied on *K.K. Modi v. K.N. Modi*, 1998(3) SCC 573. **[Para 12]**

Cases Referred to :

1. 1998(3) SCC 573, *K.K. Modi v. K.N. Modi* — Six essential attributes of a valid arbitration agreement. (Para 12)
2. 2007(5) SCC 719, *Jagdish Chander v. Ramesh Chander* — Clause providing only a possibility of referring disputes to arbitration is not a binding arbitration agreement but, at best, an agreement to enter into an arbitration agreement in future. (Paras 12, 13)
3. (2024) 12 SCC 1, *SBI General Insurance Co. Ltd. v. Krish Spg.* — Scope of enquiry under Section 11 is confined to a *prima facie* scrutiny of existence of the arbitration agreement. (Para 7.1)
4. (2025) 2 SCC 192, *Goqii Technologies (P) Ltd. v. Sokrati Technologies (P) Ltd.* — Limited jurisdiction of Referral Court not to be misused to force parties into costly arbitration. (Para 7.2)
5. 2025 SCC OnLine SC 1471, *BGM and M-RPL-JMCT(JV) v. Eastern Coalfields Ltd.* — Follows *Jagdish Chander* on what constitutes a binding arbitration agreement. (Para 12)

Shri Krishan Kumar, for the appellant. Shri Rohan Ganpathy, for the respondent.

Judgment

Sanjay Karol, J. – (17-04-2026) –

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